

number of claims, but the issues on this appeal concern two separate claims. On October 1, 1993 he filed an occupational claim alleging that he sustained bilateral wrist injuries as a result of his federal employment as a mail handler. The Office accepted that appellant sustained bilateral wrist sprains and bilateral de Quervain's tenosynovitis. By decision dated March 28, 1996, the Office issued a schedule award for an 18 percent left upper extremity impairment and 12 percent for the right upper extremity. On March 4, 1997 the Office issued a schedule award for a 39 percent permanent impairment to the right arm. By decision dated August 1, 2001, the Office issued a schedule award for a 12 percent left upper extremity permanent impairment and 8 percent for the right upper extremity.

By decision dated August 30, 2002, the Office issued a schedule award for an additional 21 percent permanent impairment to the left arm and 6 percent for the right arm. The period of the award was 84.24 weeks from August 28, 2002 to April 8, 2004.

On September 30, 2003 appellant filed an occupational claim for a left shoulder injury. The Office accepted this claim for a left rotator cuff tear. Appellant began receiving compensation for temporary total disability as of January 14, 2004.

In a letter dated May 28, 2004, the Office notified appellant of a preliminary determination that an overpayment of \$5,606.57 was created. The Office stated that appellant had received compensation for wage loss during a period he was receiving a schedule award. The Office found that appellant was at fault in creating the overpayment as he accepted payments he knew or should have known were incorrect.

Appellant requested a hearing before an Office hearing representative, which was held on March 22, 2005. By decision dated September 14, 2005, the hearing representative finalized the preliminary overpayment determinations. The hearing representative indicated that appellant was receiving schedule award payment for bilateral arm impairment from January 14 to March 20, 2004, at the same time he received compensation for wage loss for the left shoulder, a part of the left upper extremity. According to the hearing representative, appellant accepted payments he knew or should have known were incorrect. With respect to repayment, the hearing representative found that \$250.00 should be deducted from appellant's continuing compensation payments.

Following the Board's February 28, 2007 order, the Office issued a March 9, 2007 decision on the merits of the claim. The Office denied modification of the overpayment determinations.

LEGAL PRECEDENT -- ISSUE 1

Section 8116 of the Federal Employees' Compensation Act defines the limitations on the right to receive compensation benefits. This section provides:

“While an employee is receiving compensation under this subchapter or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would continued,

he may not receive salary, pay or remuneration of any type from the United States, except--

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the Veterans Administration (VA) unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or the uniformed services, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.”

The Act further provides that “compensation” includes “the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees’ Compensation Fund, but this does not in any way reduce the amount of monthly compensation payable for disability or death.”²

ANALYSIS -- ISSUE 1

The case record indicated that appellant was receiving compensation payment pursuant to an August 30, 2002 schedule award. The period of the award was from August 28, 2002 to April 4, 2004. Appellant filed a claim for a left shoulder injury and from January 14 to March 20, 2004, he received compensation for wage loss pursuant to that claim.

As 5 U.S.C. § 8116 clearly states, an employee who is receiving compensation benefits is not entitled to any other remuneration from the United States, except under the specified circumstances. None of the circumstances are implicated in the present case. Appellant was receiving compensation pursuant to the August 30, 2002 schedule award and during the period of the award he would not be entitled to compensation for wage loss. While both the Office and appellant argue over whether the schedule award was for the same part of the body, this is not the issue. Section 8116 does not make a distinction between compensation received for the same injury and compensation received for different injuries.³ If appellant is receiving compensation under the Act for any employment injury, he or she is not entitled to remuneration of any type from the United States, unless one of the specific exceptions is applicable.

The Board therefore finds that during the period January 14 to March 20, 2004 appellant was not entitled to compensation for wage loss pursuant to the left shoulder claim, because he was currently receiving compensation pursuant to a schedule award. The Office indicated that appellant received \$5,606.57 in wage-loss compensation during the applicable period and there is no contrary evidence. This amount represents an overpayment of compensation.

² 5 U.S.C. § 8101(12).

³ The reference to the “same injury” occurs with respect to VA benefits.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act⁴ provides: “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”⁵ No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.⁶

On the issue of fault 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: “(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.”

ANALYSIS -- ISSUE 2

The Office found that appellant was at fault in that he accepted a payment he knew or should have known was incorrect. There is no evidence in the record, however, to support the Office’s finding. No specific evidence was cited by the Office to show why appellant knew or should have known the compensation for wage-loss payments he received from January 14 to March 20, 2004 were incorrect. The Office did not notify appellant of the provisions of 5 U.S.C. § 8116 and, as the above discussion illustrates, the Office itself did not fully understand the relevant law with respect to receipt of compensation payments pursuant to a schedule award and compensation for wage loss. There is no probative evidence establishing that appellant accepted payments he knew or should have known were incorrect.

The case will be remanded to the Office for a proper decision with respect to waiver of the overpayment. After such further development as the Office deems necessary, it should issue an appropriate decision. The Board will not address the repayment of compensation issue at this time.

CONCLUSION

Appellant received compensation pursuant to a schedule award at the same time he received compensation for wage loss and an overpayment of \$5,606.57 was created. There is no evidence that appellant was at fault in creating the overpayment and the case will be remanded for further development as to waiver of the overpayment.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8129(b).

⁶ *Gregg B. Manston*, 45 ECAB 344 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2007 is affirmed with respect to an overpayment of \$5,606.57. The decision is set aside and the case remanded for further action consistent with this decision of the Board with respect to waiver of the overpayment.

Issued: December 17, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board